No. 13119

IN THE

United States Court of Appeals

FOR THE NINTH CIRCUIT

PEOPLE OF THE STATE OF CALIFORNIA and MAURICE C. SPARLING, as Superintendent of Banks of the State of California,

Appellants,

vs.

COAST FEDERAL SAVINGS AND LOAN ASSOCIATION,

Appellee.

BRIEF OF AMICI CURIAE ON BEHALF OF CALIFORNIA SAVINGS & LOAN LEAGUE.

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BRIEF OF AMICI CURIAE ON BEHALF OF CALIFORNIA SAVINGS & LOAN LEAGUE.

I.

The Interest of California Savings & Loan League.

With the permission given by the Court, this brief is filed on behalf of California Savings & Loan League (sometimes referred to as "the League"), a group composed of over two hundred member associations, both state and federal. In this action, the Superintendent of Banks of the State of California seeks to make the State Bank Act (now a division of the California Financial Code) applicable to appellee, a federal savings and loan association. The Superintendent attempts to regulate and supervise federal savings and loan associations by determining what is proper or permissible advertising, what name or names may be used, and other matters pertaining to the internal operations of the federal association's business. (See appellant's Statement of the Case, App. Br. pp. 4-8, incl.)

The League possesses a derivative interest in this proceeding, having as its source the fact that many of its members are members of the Federal savings and loan system. Should the position asserted by the Superintendent be sustained by the Court, then

1. A federal savings and loan association doing business in California, although a member of the Federal system and under full regulation and supervision by the Federal Home Loan Bank Board, may be subjected to the additional and perhaps conflicting control by the State Superintendent of Banks in the course of the conduct of its business and internal affairs.

2. A member of the Federal savings and loan system would be subject to the control and regulation of varying types and degrees by the state in which it operates and over matters pertaining to the conduct of its internal business, even though such conduct may be permissible under federal laws and regulations applicable to such federal associations.

3. The structure of the Federal savings and loan system will be harmed because the uniformity of federal control will be thereby weakened or eliminated; and the benefits created by federal laws will be lessened and perhaps whittled away and rendered meaningless because of the regulations of one or perhaps forty-eight banking commissioners with the disturbing diversity which will result from the high Courts of the various states seeking to enforce the regulatory rulings of their respective banking commissioners.

II.
Statement of the Case.

In the interest of completeness and accuracy, several additions or corrections should be made to appellant's Statement of the Case (App. Br. pp. 4 to 8, incl.).

(a) As an addition, it is to be noted that the Court found "No evidence was offered which would support, a finding that defendant was actually transacting its business other than strictly within the limited perimeter of its expressly authorized field." [R. 108.]

(b) The emphasis placed upon the word "bank" was definitely discontinued by appellee about seven months before this action was commenced. [Stipulation of Facts, R. 95; Opinion and Facts filed by the Court, R. 108-109.] The statement made in Appellant's Brief in the paragraph commencing at the bottom of page 7 and continuing to page 8 seems contrary to the facts above mentioned.

(c) The appellee's corporate name is Coast Federal Savings and Loan Association of Los Angeles. [Answer, R. 24-37; Statement of Facts, R. 93.] Section 3392 of the Financial Code of California, formerly Section 12a of the Bank Act, provides in part as follows:

> "Any building and loan association or savings and loan association having in its *corporate name* words not clearly indicating the nature of its business shall state, on all signs, letterheads, and advertising matter, 'This is a building and loan association' or 'This is a savings and loan association' or words to that effect." (Italics added.)

Appellants' action is based upon an alleged violation of this statute but appellants have never stated or indicated what words in appellee's *corporate name* do not clearly indicate the nature of its business.

(d) Section 3393 of said Financial Code reads as follows:

> "§3393. Business which may be transacted by building and loan associations. Any building and loan association may issue shares and investment certificates and do such other business as may be authorized by the laws of the State relating to building and loan associations, but *no building and loan association shall advertise or hold itself out to the public as a savings bank.*" (Italics added.)

Appellee is not a building and loan association. (See Sec. 5057, Financial Code; discussion, *post* page 11.)

III.

Pertinent Statutes.

In addition to the statutes set forth in Appellants' Brief (pp. 9-12), the Court's attention should be called to Section 5(a) of the Home Owners Loan Act of 1933, as amended (12 U. S. C. A. 1464(a)), reading as follows:

> "§1464. Federal Savings and Loan Associations —Organization authorized. (a) In order to provide local mutual thrift institutions in which people may invest their funds and in order to provide for the financing of homes, the Board is authorized, *under such rules and regulations as it may prescribe, to provide for the organization, incorpora-*

> *tion, examination, operation, and regulation of associations to be known as 'Federal Savings and Loan Associations,'* and to issue charters therefor, giving primary consideration to the best practices of local mutual thrift and home-financing institutions in the United States." (Italics added.)

As indicating that Congress intended a federal savings and loan association to be an instrumentality of the United States, attention is also called to Section 5(k) of the aforesaid statute (12 U. S. C. A. 1464(K)), reading as follows:

> "(k) When designated for that purpose by the Secretary of the Treasury, any Federal savings and loan association or member of any Federal Home Loan Bank may be employed as fiscal agent of the Government under such regulations as may be prescribed by said Secretary and shall perform all such reasonable duties as fiscal agent of the Government as may be required of it. *Any Federal savings and loan association or member of any Federal Home Loan Bank may act as agent for any other instrumentality of the United States when designated for that purpose by such instrumentality of the United States."* (Italics added.)

Pursuant to the Home Owners Loan Act of 1933, as amended, the Federal Home Loan Bank Board has adopted comprehensive rules and regulations concerning the organization and operation of all federal savings and loan associations [Dist. Ct. Op., R. 111].

ARGUMENT.

A.

The Statutes Relied Upon by Appellants in Instituting This Action Are Not Applicable to Federal Savings and Loan Associations.

1. The State Legislature Did Not Intend the California Statutes Claimed to Be Violated to Be Applicable to Federal Savings and Loan Associations.

In this action (filed November 3, 1949), appellants alleged a violation of Sections 12 and 12(a) of the California Bank Act (Deering's General Laws, Act 652). Although clearly related and pertaining to the question as to whether the State Bank Act is applicable to Federal savings and loan associations (sometimes for brevity referred to herein as "federal associations" or "federals"), appellants have not even referred to or mentioned the State statutes dealing with building or loan associations or federal associations.

A fundamental principle of statutory construction is that a statute must be read and construed as a whole in harmony with other statutes relating to the same general subject.

> *In re Marquez* (1935), 3 Cal. 2d 625, 628, 45 P. 2d 342;
>
> *In re Goddard* (1937), 24 Cal. App. 2d 132, 139, 74 P. 2d 818.

Another rule is that statutes *in pari materia* should be construed together so as to harmonize them if possible,

to ascertain the legislative intent and maintain the integrity of both.

> *United States v. Stewart* (1940), 311 U. S. 60, 64, 85 L. Ed. 40, *45*, 61 S. Ct. 102;
>
> *Layne-Western Co. v. Buchanan County* (1936) (C. C. A. 8th), 85 F. 2d 343, *347*;
>
> *State of California v. Brotherhood Trainmen* (Calif.) (1951), 37 A. C. 413, *423*, 232 P. 2d 857;
>
> *Estate of Jacobs* (1943), 61 Cal. App. 2d 152, *155*, 142 P. 2d 454.

In order to determine what the State Legislature intended, it is necessary to examine such statutes dealing with building and loan associations, and also federal associations. A brief history and summary of the State legislation is as follows:

Prior to October 1, 1949, the State statutes were:

> Bank Act (Deering's General Laws, Act 652; enacted Stats. 1909, p. 87, and as amended in subsequent years);
>
> Building and Loan Association Act (Deering's General Laws, Act 986; enacted Stats. 1931, p. 483, and as amended in subsequent years);
>
> Rights, etc. of Federal associations doing business within state (Deering's General Laws, Act 988; enacted Stats. 1939, Ch. 525).

In 1949, the Legislature adopted the State "Banking Code" which in substance codified the Bank Act. Sections 12 and 12(a) were codified as Sections 3390-3395 of the Banking Code which became effective October 1,

1949. This code was only in effect for two years, being superseded by the Financial Code.

In 1951, the Legislature repealed the Banking Code and enacted a *more comprehensive* code dealing with financial institutions. Division 1 of the Financial Code pertains to banking and is a transfer and adoption of the previous Banking Code as Division 1 of the new code. (Sections 3390-3395 of the repealed Banking Code were adopted as the same numbered sections of the new Financial Code.) Division 2 of the Financial Code deals with building and loan associations and, although this division of the code was *enacted* in 1951, it does not become effective until 1953. The foreword to Deering's Annotated Financial Code (p. v) states in part as follows:

> "The Financial Code was enacted at the 1951 Regular Session of the Legislature. It consolidates and revises the law relating to the organization, regulation, and supervision of financial institutions and financial transactions, and matters incidental thereto. The entire Banking Code was repealed and incorporated in it as Division 1. The Financial Code became effective September 22, 1951, with the exception of Division 2 (embodying the Building Loan Association Act), which will become operative on the 91st day after adjournment of the 1953 Regular Session of the Legislature."

In connection with the consideration of the Financial Code which was adopted in 1951, and the entire legislative plan or scheme as shown by such code, another established rule of statutory construction is applicable and extremely helpful. This rule permits consideration of a later statute if it helps in determining the intent of the

Legislature as to previous legislation. The rule is stated in *Great Northern Railway Co. v. United States* (1941), 315 U. S. 262, *277,* 86 L. Ed. 836, *844,* 62 S. Ct. 529:

> "It is settled that 'subsequent legislation may be considered to assist in the interpretation of prior legislation upon the same subject.' Marchie Tiger v. Western Invest. Co., 221 U. S. 286, 309, 55 L. ed. 738, 747, 31 S. Ct. 578."

In *Hubbell v. Commissioner of Internal Revenue* (C. C. A., 6th Cir., 1945), 150 F. 2d 516, *522,* the Court says:

> "It is true that subsequent legislation may be considered to aid in the interpretation of prior legislation upon the same subject. Great Northern R. Co. v. United States, 315 U. S. 262, 277, 62 S. Ct. 529, 86 L. ed. 836. *Cf.* Brewster v. Gage, 280 U. S. 327, 337, 50 S. Ct. 115, 74 L. ed. 457; Board of County Commissioners, *et al* v. Seber, *et al.,* 318 U. S. 705, 714, 63 S. Ct. 920, 87 L. ed. 1094; Keasbey & Mattison Co. v. Rothensies, 3 Cir., 133 F. 2d 894, 898."

An analysis of all the pertinent statutes as now contained in the Financial Code, and also the predecessor statutes or acts, shows clearly that Sections 12 and 12(a) of the Bank Act (now Secs. 3390-3395, Financial Code) were not intended to apply to federal savings and loan associations.

The Legislature has dealt separately with federal savings and loan associations, and any intended regulations or restrictions by the State would logically appear in the separate act, separate part, or division of the code dealing with such federal associations. As pointed out, federal associations were formerly specifically covered by

Deering's General Laws, Act 988. In 1951, with the enactment of the Financial Code, Division 2, covering building and loan associations is divided into three parts, Part 1 covering Building and Loan Associations, Part 2, Borrowers' Mutual Building and Loan Associations, and Part 3, Federal Savings and Loan Associations. Part 3 of this Division, with a few additions, is a codification of Act 988. For example, Section 11,000, Financial Code, is a codification of Section 1, Act 988, Deering's General Laws, and reads as follows:

> "§11000. *Rights, powers, and privileges available to federal associations and shareholders under laws of State.* Every federal savings and loan association incorporated under the provisions of the Home Owners' Loan Act of 1933, as now or hereafter amended, and the holders of shares or share accounts issued by any such association, respectively, have all the rights, powers, and privileges, and are entitled to the same exemptions and immunities granted, respectively, to building and loan associations organized under the laws of this State and to the holders of investment certificates, membership shares, or guarantee stock of domestic associations."

In the entire Part 3 dealing with federal associations (and in the former statute, Act 988) there is no mention whatsoever of any restrictions or regulations as to the name, advertising or internal operations, nor is there any provision for state supervision or control by either the Building and Loan Commissioner or by the Superintendent of Banks. The complete omission of any regulation or supervision as to "federals" is significant and

indicates a clear legislative intent not to so regulate or supervise federals as to such matters.

A federal savings and loan association is specifically excluded from the definition of building and loan associations. Section 5057, Financial Code, reads as follows:

> "§5057. 'Building and loan association.' 'Building and loan association' means any institution incorporated to conduct, or conducting, the business of receiving and lending money in accordance with the provisions of this part, *except federal savings and loan associations.*" (Italics added.)

Furthermore, under the previous Building and Loan Association Act (Act 986, Deering's General Laws), it is clear that a building and loan association refers to an association incorporated under the state laws pursuant to the terms of said statute and under the regulation and control of the Building and Loan Commissioner. (See Section 1.02 defining a building and loan association, Act 986.) Section 2.02 of the Act 986 provides as follows:

> "Sec. 2.02. Restrictions on Corporate Name. The Name of each domestic association hereafter incorporated shall include the words 'building and loan association' or 'building-loan association' or 'savings and loan association'; provided, however, that no domestic association hereafter incorporated shall include the word 'mutual' in its name unless it shall be organized without stock, nor shall it include the word 'guaranty' or 'guarantee' in its name unless it shall be organized to issue stock."

Throughout the Act, federals are treated separate and specifically designated as such federal savings and loan associations in distinction from domestic building and loan

associations. For example, see Section 12.11 dealing with the subject of conversion of an association "into a federal savings and loan association" and Section 12.12 dealing with the subject of conversion of "any federal savings and loan association . . . into a building and loan association under the laws of this State."

It is demonstrable from the above that both under the present Financial Code and under the former Building and Loan Association Act a "building and loan association" does not include a federal association. With this in mind, let us read Section 3393, Financial Code, which provides as follows:

> "Sec. 3393. Business which may be transacted by building and loan associations. *Any building and loan association* may issue shares and investment certificates and do such other business as may be authorized by the laws of the State relating to building and loan associations, *but no building and loan association* shall advertise or hold itself out to the public as a savings bank." (Italics added.)

Appellants claim that this section (formerly Sec. 12(a), Bank Act), was violated by appellee, a federal association. [Complaint, Counts One to Five, R. 11-19.] In fact, the whole tenor of appellants' brief is that appellee (a federal association) is guilty of holding itself out as a savings bank in violation of said Statute. (See the first paragraph of Appellants' Brief, p. 1.) However, Section 3393 by its very terms clearly applies only to building and loan associations and appellee is a federal savings and loan association, specifically excluded from the definition of a building and loan association by Section 5057, Financial Code.

If there were any statute regulation or supervision over federal savings and loan associations, it could only logically be by the Building and Loan Commissioner, not by the State Superintendent of Banks. The former Building and Loan Association Act (Act 986) provides for the establishment of the office of Building and Loan Commissioner. (See Section 1301, *et seq.,* for creation of office and general powers of regulation.) The successor statute, Section 5250, Financial Code, provides for the powers of the Building and Loan Commissioner as follows:

> "§5250. Powers of commissioner. The commismissioner is charged with the administration and enforcement of this division, and of all other laws relating to or affecting the incorporation, organization, business, operation, merger, consolidation, dissolution, or liquidation of associations subject to the provisions of this division. The commissioner has and may exercise all of the powers necessary or convenient for such purpose."

It will be noted that this section provides that the commissioner is the administrator of *all laws* relating to any association "subject to the provisions of this division." "Federals" are covered by Part 3 of said division. It is believed that the above establishes the legislative intent to place the matter of any purported or attempted regulation or supervision affecting federal savings and loan associations under the jurisdiction of the Building and Loan Commissioner which would, of course, eliminate the applicability of any sections of Division 1 (Banking) of the Financial Code or any regulation or control by the said Superintendent of Banks.

2. The State Statutes Relied Upon by Appellants Are Not Applicable to Federal Associations Because, if Construed as Applicable, They Are in Conflict With Federal Law and Therefore Invalid.

We have argued above that the State Legislature did not intend Sections 12 and 12(a) of the Bank Act (and the successor statutes Sections 3390-95, Financial Code) to be applicable to federal associations. This position is further fortified by the fact that any other conclusion, that is, that such statutes are applicable to federal associations, would thereby put them in conflict with federal law and make them invalid.

It is a well established rule of statutory construction that if there are two possible constructions, one which would uphold the statute and the other which would make it invalid or unconstitutional, then the construction avoiding invalidity or any doubt of constitutionality will be taken. Thus in *Screws v. United States* (1944), 325 U. S. 91, *98,* 89 L. Ed. 1495, *1500,* 65 S. Ct. 1031, 162 A. L. R. 1330, the rule is stated:

> "This Court has consistently favored that interpretation of legislation which supports its constitutionality."

In *National Labor Relations Board v. Jones & McLaughlin Steel Corp.* (1936), 301 U. S. 1, *30,* 81 L. Ed. 893, *908,* 57 S. Ct. 615, 108 A. L. R. 1352, the Court said:

> "We have repeatedly held that as between two possible interpretations of a statute, by one of which it would be unconstitutional and by the other valid, our plain duty is to adopt that which will save the act. Even to avoid a serious doubt the rule is the same."

The rule is also stated in *Linder v. United States* (1925), 268 U. S. 5, *17-18,* 69 L. Ed. 819, *823,* 45 S. Ct. 446:

> "In the light of these principles and not forgetting the familiar rule, that 'a statute must be construed, if fairly possible, so as to avoid not only the conclusion that it is unconstitutional, but also grave doubts upon that score,' the provisions of this statute must be interpreted and applied."

In the California case of *Miller v. Municipal Court* (1943), 22 Cal. 2d 818, 828, 142 P. 2d 297, the rule is set forth:

> "If a statute is susceptible of two constructions, one of which will render it constitutional and the other unconstitutional in whole or in part, or raise serious and doubtful constitutional questions, the court will adopt the construction which, without doing violence to the reasonable meaning of the language used, will render it valid in its entirety, or free from doubt as to its constitutionality, even though the other construction is equally reasonable."

Henrys v. Raboin (1946), 395 Ill. 118, 69 N. E. 2d 491, 169 A. L. R. 927, presents a situation somewhat similar to the instant case. In that case, the question was whether a provision of the state constitution providing for double liability on shareholders of banks applied only to shareholders in state banks or also to shareholders in national banks. The section of the constitution did not by express language limit its application to the stock-

holders of state banks and conversely it was not worded so as to expressly include stockholders of national banks. If the state law applied to shareholders in a national bank, it would thereby be invalid. The Illinois Supreme Court applied the rule of statutory construction by accepting the interpretation which would uphold the validity of the state constitutional provision and by eliminating the construction which would make said state law unconstitutional. The Court states the rule as applied to these facts as follows:

> "There is a rule of statutory construction which has been applied to this constitutional provision. It is that where a statute comprehends within its general terms two or more subjects or classes, some of which are within the jurisdiction of the legislative power of the State and some of which are outside its authority, the courts, to sustain the law as to the class to which it should have been restricted, will exclude from the operation of the statute the subjects or classes over which the State had no legislative jurisdiction."

In the instant case, it will be argued in Point C (*post*, pages 21 to 25), there is at least grave doubt regarding the validity of making the provisions of the State Bank Act applicable to federal savings and loan associations. In view of the strong and sound rule of statutory construction set forth above, it is submitted that the state statutes are not applicable, and were not intended to be applicable, to federal associations.

B.

Even Assuming the Said Banking Statutes Are Applicable to Federal Associations, the Acts Complained of Here Are Not Sufficient to Establish Any Violation by Appellee.

It appears to the League that the acts complained of in this action consist principally of small matters upon which the State Superintendent of Banks has attempted to build a case. We assume for the purposes of this particular argument that the State banking statutes involved here are applicable to "federals" but we, of course, do not concede this.

As will be shown, all of these matters complained of, if they have any merit whatsoever, should properly be taken before the Federal Home Loan Bank Board, which by Federal law and administrative regulations has full and complete jurisdiction.

For example, the gravamen of Count One of the Complaint as contained in paragraph IV thereof [R. 12], is that appellee in its office signs at its place of business over-emphasized the word "bank" as used in the phrase "Member Federal Home Loan Bank" [Stipulation of Facts, R. 94, 95]. This practice was discontinued about seven months before the action was instituted [Opinion, R. 108]; there were no complaints after the change was made, as shown by Mr. Sparling's testimony:

> "Q. And you heard no complaints—rather, you know of no other instances between December, 1948, and November, 1949, where the word 'bank' was emphasized in its name on the building, or used in radio or other advertising? A. No, sir, not after the change was made, and I think it was

made—I don't know the date, but I imagine probably along in January or February of '49, and after that I did not hear any such complaint, no, sir." [R. 206.]

The most significant thing about this incident is that after the matter was called to the attention of the Federal Home Loan Bank Board (in whose jurisdiction it would properly lie), it was immediately corrected [Stipulation of Facts, R. 95], and there were no further *complaints*. This in our opinion indicates quite clearly the legal and practical solution to any such complaints as to signs or advertising by a federal association—the matter should be taken up with the Federal Home Loan Bank Board, the administrative agency which regulates and supervises such associations.

As to the acts complained of in paragraph IV of Count Two [Complaint, R. 14], and as shown by the Stipulation of Facts [R. 95-98], these all consist of matters published in appellee's *house organ* "Coast Federal's Challenger." The excerpts from this circular distributed to *employees* and customers, refer to appellee as "Coast Federal." Is there anything more natural than the use of this abbreviation when speaking to employees and customers? The house organ also refers to "savings" and to "savings accounts." These terms have been approved for advertising uses by the Federal Savings and Loan Insurance Corporation [Opinion, Facts, R. 109]. The use of the phrase "Earns interest from the 1st" undoubtedly is questionable [R. 96; Opinion, R. 109]; however, considering the fact that this appeared in a house organ, it would seem to be of a somewhat minor nature and, if for any reason it should be considered serious, is

something to be called to the attention of the Home Loan Bank Board.

As to the slogan contest conducted in the house organ and the selection of one referring to "banking business" [R. 96-97], we feel that such material is of inconsequential significance and in no sense does the same constitute substantially, or otherwise, "a holding out as a bank." This particular slogan contest matter seems to be the gravamen of Count Three [R. 16-17].

With regard to the general use of the term "Coast Federal Savings" in advertising the institution, and which is complained of in Count Four [R. 17-18], we believe that the use of such name "Coast Federal Savings" is perfectly proper and is justified by all business practices, by common sense and everyday usage. The mere assertion of the position taken by appellants that in every use of its name whether for formal purposes or for advertising or in an employees' publication, or otherwise, the institution must refer to itself as "Coast Federal Saving and Loan Association of Los Angeles" (its full corporate name) indicates that such argument borders on the absurd.

Furthermore, there is no violation of the State statute involved even if the same is applicable to federal associations. The pertinent part of the State statute (Sec. 3392, Financial Code) reads:

> "Any building and loan association or savings and loan association having in its corporate name words not clearly indicating the nature of its business shall state, on all signs, letterheads, and advertising matter, 'This is a building and loan association' or 'This is a savings and loan association' or words to that effect."

We believe it obvious that appellee, Coast Federal Savings and Loan Association of Los Angeles, does not have "in its corporate name words not clearly indicating the nature of its business." We, therefore, assert that there is no violation of this statute whatsoever and the use of the term "Coast Federal Savings" is entirely beside the point and not even affected by this statute. We further assert that such abbreviation of its name, particularly in advertising, is just as natural and lacking in deception as any of the following: the use of Bank of America for Bank of America National Trust and Savings Association; the use of Security Bank for Security-First National Bank of Los Angeles; the use of Superintendent for Superintendent of Banks of the State of California; the use of Supreme Court for Supreme Court of the United States.

We call the Court's attention again to the actual wording of Section 3393, Financial Code (formerly Sec. 3393, Banking Act) which by its wording applies only to building and loan associations, as follows:

> "§3393. Business which may be transacted by building and loan associations. Any building and loan association may issue shares and investment certificates and to such other business as may be authorized by the laws of the State relating to building and loan associations, but no building and loan association shall advertise or hold itself out to the public as a savings bank."

Appellee is not a building and loan association (Sec. 5057, Financial Code) and, therefore, it cannot in any sense be established that appellee, a federal association, violated such statute.

When the statutes are carefully read and the acts of appellee analyzed the conclusion follows that even if the statutes are applicable to federal associations there were no violations of such statutes by appellee.

C.

The Federal Government Exercises Full, Complete and Exclusive Jurisdiction Over Federal Savings and Loan Associations and Having Occupied This Field Any Attempted State Regulation or Supervision Is Invalid.

The Federal statute (Sec. 5, Home Owners' Loan Act of 1933, as amended, 12 U. S. C. A., Sec. 1464) provides for the organization, incorporation, examination, operation and regulation, under rules and regulations of the Home Loan Bank Board, of associations to be known as "Federal Savings and Loan Associations." The statutory purposes of federal savings and loan associations are "to provide local mutual thrift institutions in which people may invest their funds and in order to provide for the financing of homes." Under this full grant, the power of the Board is plenary. Federal savings and loan associations are instrumentalities of the United States.

Federal Savings & Loan Ins. Corp. v. Kearney Trust Co. (1945), 151 F. 2d 720 (C. A. 8);

Waterbury Savings Bank v. Danaher, 128 Conn. 78, 20 A. 2d 455;

State v. Minnesota Federal Savings & Loan Assn., 218 Minn. 229, 15 N. W. 2d 568.

We will concede at the outset that there are certain state or local laws applicable to federal associations. These are laws not regulatory of savings institutions as such,

but generally applicable to the public. If appellee owns real estate, it is subject to the laws of California with reference to real property taxation. If it seeks redress through the medium of a State court it must obviously comply with the adjective laws of procedure of the State courts.

The line to be drawn is that as applied to a federal instrumentality, the State law cannot regulate its internal organization, its business conduct or affect or be restricitve as to the federal purposes for which the instrumentality was created.

Examples of local laws which have been held to be applicable to corporations or organizations claiming federal protection are cited and stressed in appellant's brief but we believe that all of these cases are immaterial and not in point. For example, appellant relies upon the case of *Capital Building and Loan Assoc. v. Kansas Commission* (1938), 148 Kans. 446, 83 P. 2d 106, which held that a state building and loan association which was also a member of the Federal Home Loan Bank was not exempt from paying taxes under the state Unemployment Compensation law. We concede the correctness of this holding.

All of these cases properly hold local laws are applicable because they do not affect or regulate the federal instrumentality or organization in the conduct of its business or internal organization or with reference to carrying out the federal purposes for which organized.

But let us examine the regulation and supervision attempted in the instant case. The State Superintendent of Banks asserts authority

(a) To determine what is the proper name appellee may use, "Coast Federal Savings and Loan Association" or "Coast Federal Savings" or "Coast Federal."

(b) To determine what is proper advertising and whether such terms as "savings" or "savings account" (approved by the Federal Savings and Loan Insurance Corporation) may be used.

(c) To determine generally whether the prohibition against "holding out as a savings bank" which by State law is applicable to building and loan associations also applies to "federals."

We submit that as to any federal association all of the above, the name used, the terms used in its business and advertising, and its business conduct generally are matters vitally affecting its operation as a savings institution and clearly related to the *federal purposes* for which said associations were created. They are matters for the Home Loan Bank Board to decide while, according to Federal statute, "giving primary consideration to the best practices of local mutual thrift and home-financing institutions in the United States." For example, it is obvious that any restriction on the right to use the word "savings" would have had a serious effect upon the growth and development of federal associations. It is doubtful if such associations could not have freely used the word "savings," federal associations could have survived.

Our position, which we believe is sustained by the authorities, is that in the conduct of its business authorized by the laws of the United States, a federal savings and loan association is not subject to any regulatory power of the State Superintendent of Banks.

The Federal statute, and the regulations adopted thereunder, make no provision whatsoever for sharing authority or responsibility as to federal savings and loan associations with the State government. A leading case establishing that federal power is supreme and exclusive where Congress has passed legislation covering the field is *Bethlehem Steel Company v. New York Labor Relations Board* (1946), 330 U. S. 767, 91 L. Ed. 1234, 67 S. Ct. 1026. In that case, the Court determined that:

> "When Congress has outlined its policy in rather general and inclusive terms and delegated determination of their specific application to an administrative tribunal, the mere fact of delegation of power to deal with the general matter, without agency action, might preclude any state action if it is clear that Congress has intended no regulation except its own."

And that:

> "But when federal administration has made comprehensive regulations effectively governing the subject matter of the statute, the Court has said that a state regulation in the field of the statute is invalid even though that particular phase of the subject has not been taken up by the federal agency."

In *First National Bank v. California* (1923), 262 U. S. 366, 67 L. Ed. 1030, 43 S. Ct. 602, the Supreme Court held that a state law providing for the escheat of deposits of a solvent national bank was invalid, saying:

> "These banks are instrumentalities of the Federal government. Their contracts and dealings are subject to the operation of general and undiscriminating state laws which do not conflict with the letter or the general object and purposes of congressional legislation. But any attempt by a state to define their duties or control the conduct of their affairs is void whenever it conflicts with the laws of the United States or frustrates the purposes of the national legislation or impairs the efficiency of the bank to discharge the duties for which it was created."

See also:

Davis v. Elmira Savings Bank (1896), 161 U. S. 275, 283, 288, 290, 40 L. Ed. 700, 16 S. Ct. 502;

First Federal Savings and Loan Association of Wisconsin v. Finnegan (1937), 19 Fed. Supp. 678, affirmed 97 F. 2d 831, 121 A. L. R. 99;

First Federal Savings and Loan Association of Meriden v. Danaher, Commissioner (1940), 128 Conn. 78, 20 A. 2d 455, 464.

Conclusion.

The California Savings and Loan League is interested in a sound system of regulation and supervision for federal savings and loan associations. To be effective and to carry out the federal purposes implicit in the Federal law, the system must be uniform throughout the country with no divided responsibilities as between the Federal

Home Loan Bank Board and the numerous bank superintendents and building and loan commissioners. Certainly, there can be no logical or efficient supervision over important internal and business affairs such as use of names or advertising when state banking officials all over the country attempt to enter this field of regulation concerning federal associations.

Because

(a) The State Legislature did not intend the State statutes dealing with banking to apply to federal savings and loan associations,

(b) Even assuming applicability, the acts of appellee did not constitute violations of such State banking laws, and

(c) The federal government, having covered the field by legislation and regulation as to federal associations, has complete and exclusive jurisdiction and any attempted State regulation is therefore invalid,

the conclusion follows that the decision of the District Court should be affirmed.

As *amici curiae,* we respectfully request affirmance of the judgment below.

Respectfully submitted,

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JAMES C. SHEPPARD and
FRANK S. BALTHIS,
Amici Curiae on Behalf of California Savings and Loan League.